

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

XAVIER BECERRA, in his official capacity as
SECRETARY OF HEALTH AND HUMAN
SERVICES; and U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,¹

Defendants.

Case No. 1:19-cv-01672-GLR

JOINT STATUS REPORT

The parties submit this joint status report pursuant to this Court's May 21, 2021 order, ECF No. 117, to provide an update regarding the status of related appellate proceedings.

As the parties reported in their May 21, 2021 joint status report, Defendants filed notices of appeal to the United States Court of Appeals for the Second Circuit of the final judgments in the United States District Court for the Southern District of New York that vacated the rule that Plaintiff challenges in this case. *See State of New York v. U.S. Dep't of Health & Human Servs.*, No. 1:19-cv-4676-PAE, Notice of Appeal, ECF No. 255 (S.D.N.Y.) (*New York*); *Planned Parenthood Fed'n of Am., Inc. v. Azar*, No. 1:19-cv-5433-PAE, Notice of Appeal, ECF No. 123 (S.D.N.Y.) (*Planned Parenthood*); *Nat'l Family Planning & Reproductive Health Ass'n v. Azar*, No. 1:19-cv-5435-PAE, Notice of Appeal, ECF No. 129 (S.D.N.Y.) (*NFPRHA*). Intervenors in the Southern District of New York litigation also filed notices of appeal. *See New York*, Notice of Appeal, ECF No. 254; *Planned Parenthood*, Notice of Appeal, ECF No. 122; *NFPRHA*, Notice

¹ Secretary Becerra has been automatically substituted for former Acting Secretary Cochran pursuant to Federal Rule of Civil Procedure 25(d).

of Appeal, ECF No. 128. The Second Circuit scheduled oral argument in the two consolidated cases for March 16, 2021. However, on February 5, 2021, the Second Circuit granted Defendants' consent motion to remove the cases from its oral argument calendar and to place the appeals in abeyance while new leadership at the U.S. Department of Health & Human Services (HHS) evaluates the issues the cases present. The Second Circuit directed Defendants to file stay status letters every thirty days. Most recently, on August 6, 2021, Defendants informed the Second Circuit that "HHS remains in the process of reassessing the issues that these cases present," and indicated that HHS "will file additional status reports at 30-day intervals, consistent with the Court's order."

Defendants also appealed to the United States Court of Appeals for the Ninth Circuit, seeking review of the final judgment in the United States District Court for the Eastern District of Washington vacating the challenged rule on November 21, 2019, *Washington v. Azar*, No. 2:19-CV-00183-SAB (E.D. Wash.) (*Washington*), as well as of the final judgments entered in three cases in the United States District Court for the Northern District of California where the court also vacated the challenged rule, *City & County of San Francisco v. Azar*, No. 3:19-cv-2405-WHA (N.D. Cal.) (*San Francisco*); *California v. Azar*, No. 3:19-cv-2769-WHA (N.D. Cal.) (*California*); *County of Santa Clara v. U.S. Dep't of Health & Human Servs.*, No. 3:19-cv-2916-WHA (N.D. Cal.) (*Santa Clara*). The Ninth Circuit initially scheduled oral argument for February 8, 2021 but removed the consolidated cases from its argument calendar upon Defendants' motion. In light of new leadership at HHS, Defendants requested that the appeal remain in abeyance. Most recently, on August 2, 2021, Defendants requested that the Ninth Circuit keep the cases in abeyance for a further sixty days. The Ninth Circuit granted that motion and directed the parties to provide a further status report by October 1, 2021 as to whether the appeal will continue to be prosecuted.

Dated: August 19, 2021

By: /s/ Jane Lewis

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